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KENYON & KENYON LLP  
ONE BROADWAY  
NEW YORK NY 10004

**MAILED**

**SEP 16 2010**

**OFFICE OF PETITIONS**

In re Application of	:	DECISION ON REQUEST
Rehbein et al.	:	FOR RECONSIDERATION OF
Patent Number: 7,589,290	:	PATENT TERM ADJUSTMENT
Issue Date: 09/15/2009	:	
Application No. 10/524726	:	
Filing or 371(c) Date: 02/16/2005	:	
Attorney Docket Number: 10191/4135	:	

This is a decision on the petition filed on May 21, 2010, requesting that the patent term adjustment indicated on the above-identified patent be corrected to indicate that the term of the above-identified patent is extended or adjusted by twenty-nine (29) days.

The petition to correct the patent term adjustment indicated on the above-identified patent to indicate that the term of the above-identified patent is extended or adjusted by thirty-four (34) days is **DISMISSED**.

Applicants request 29 days of patent term adjustment pursuant to 37 CFR 1.703(b), in the period beginning on the day after the date that is three years after the date on which the application was filed under 35 U.S.C. 111(a), February 17, 2008, and ending on the day before the date a Request for Continued Examination ("RCE"), was filed, December 8, 2008.

As to the "B" delay, the period is zero (0) days, not 297 days. This period begins on the day after the date that is three years after the date on which the application was filed under 35 U.S.C. 111(a), and ends on May 30, 2005, the day before the RCE was filed, and is 297 days, but does not include the number of days beginning on the date on which a notice of appeal to the Board of Patent Appeals and Interferences was filed under 35 U.S.C. 134 and § 41.31, and ending on the date of mailing of the non-final Office action, March 29, 2005, or 105 days. See, 35 U.S.C. 154(b)(1)(C)(iii). Thus, the "B" delay period is zero (0) (297 days – 302 days), not 297 days<sup>1</sup>.

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<sup>1</sup> The Office notes that where a request for continued examination ("RCE"), has been filed, the period of appeal is only reduced if such appeal period occurred prior to the filing of the RCE. If no RCE has been filed, the period of appeal is reduced if it occurs at anytime during the pendency of application.

Nothing in this decision shall be construed as a waiver of the requirement of 35 U.S.C. 154(b)(4) that any civil action by an applicant dissatisfied with a determination made by the Director under 35 U.S.C. 154(b)(3) be filed in the United States District Court for the District of Columbia within 180 days after the grant of the patent.

The Office acknowledges submission of the \$200.00 fee set forth in 37 CFR 1.18(e). No additional fees are required.

Telephone inquiries specific to this matter should be directed to the undersigned at (571) 272-3232.

/DLW/

Derek L. Woods  
Attorney  
Office of Petitions